

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4635 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

-----  
BABU @RANDI @ MUNAFMIYA

AHMEDMIYA MALEK

Versus

STATE OF GUJARAT

-----  
Appearance:

Mr. Champaneri for Mr. M.H Barejia for Petitioner  
Mr.L.R.Poojari, APP for Respondents.

-----  
CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 16.4.1996 passed by the District Magistrate, Kheda whereby the petitioner has been detained under Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was served on 17.4.1996, since then the petitioner is under detention

lodged at Sub Jail, Bhuj. The grounds of detention enclosed with the detention order show the pendency of five cases under Prohibition Act against the petitioner which are pending in the Court for trial. All these cases pertaining to Petlad Police Station Town are of the years 1994 and 1995. While noticing allegations against the petitioner with reference to these five criminal cases under the Prohibition Act, the Detaining Authority has noticed that the petitioner is engaged in unauthorised business of sale of country liquor and has become problem for the public order on account of these activities and he has created an atmosphere of fear amongst the innocent citizens. Besides this, the Detaining Authority has also taken into consideration the statements made by four witnesses who have stated that the petitioner is engaged in the unauthorised sale of liquor, he is headstrong person and has created an atmosphere of terror and fear psychosis in public and has been threatening the people who do not co-operate him in the business of unauthorised liquor, he has been using arms. The witnesses have requested that their identity be kept secret because they are afraid and frightened of the petitioner. The Detaining Authority has found the fear of the witnesses to be genuine. Accordingly for reasons of their security, their identity has not been disclosed. The Detaining Authority has specified that the petitioner is bootlegger and has been disturbing the routine life of the people and is a headstrong person and therefore, it was necessary to detain him for the reasons of public order. It has also been considered by the Detaining Authority that the other proceedings with regard to externment etc. may not be useful to stop the antisocial activities of the petitioner.

The learned counsel for the petitioner has submitted that in this case the proposal for detention had been made and thereafter the detention order had been passed on 17.4.1996 and that the privilege claimed under section 9(2) of the PASA Act was not genuine and the grounds of detention taken on its face value do not constitute the case of breach of public order. The learned counsel for the petitioner has laid stress on the allegations levelled against him and all that can be said is that they constitute the case of law and order and there is no question of any breach of public order and he has also submitted that this petition deserves to be allowed on this ground alone.

I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find

that the allegations as have been levelled do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application No. 3879 of 1996 decided on 4.10.1996 and after considering the ratio of the judicial pronouncements by the Supreme Court and this Court it has been found that the allegations such as levelled in the present case do not constitute the case of breach of public order and it is at the most a case of breach of law and order. The reasoning on which the Special Civil Application No. 3879 of 1996 has been allowed applies with full force to the facts of the given case. It is held that the detention order as passed in this case was not at all warranted.

Accordingly this Special Civil Application is allowed. The detention order dated 16.4.1996 passed by the District Magistrate, Kheda is hereby quashed and set aside. The petitioner's detention is declared to be illegal and the respondents are directed to release the petitioner-detenu and set him at liberty forthwith, if not required in any other case. Rule made absolute.

-----